

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

Friday, January 12, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:41 a.m. at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Bill Deaver, Kathleen Makel, and Gordana Swanson were present.

Chairman Getman began the meeting by announcing that this would be the last meeting for Commissioners Bill Deaver, Kathleen Makel, and Carol Scott. She also noted that General Counsel Sue Ellen Wooldridge had accepted a position with the Bush administration, as a Special Assistant to the President elect's nominee for Secretary of the Department of the Interior, Gale Norton.

Item #1. Approval of the Minutes of the December 8, 2000, Commission Meeting.

The minutes of the December 8, 2000 Commission meeting were distributed to the Commission and made available to the public. There being no objection, the minutes were approved.

Item #2. Public Comment.

There was no public comment at this time.

Commissioner Carol Scott arrived at 9:45 a.m.

Items #9, #10, #12, #13, #14, #15, #16, and #17.

Commissioner Swanson motioned approval of the following items on the consent calendar:

- Item #9. *In the Matter of Core Partners, FPPC No. 2000/451.***
- Item #10. *In the Matter of Pamela Alsterlind, FPPC No. 00/540.***
- Item #12. *In the Matter of D. Anthony Ephriam, FPPC No. 2000/524.***
- Item #13. *In the Matter of County Alliance for a Responsible Education System and Kathy Frasca, FPPC No. 99/352.***
- Item #14. *In the Matter of Joseph Ruiz, Committee to Elect Joseph F. Ruiz to City Council, and Ramona Ruiz, FPPC No. 99/229.***
- Item #15. *In the Matter of Santa Clara United Democratic Campaign and James P. Thurber, FPPC No. 97/62.***
- Item #16. *In the Matter of Nationwide Auction Systems, FPPC No. 99/641.***
- Item #17. *In the Matter of Daniel E. Lungren, Lungren For Governor, and David Bauer, treasurer, FPPC No. 99/819.***

Commissioner Deaver seconded the motion.

Commissioner Makel noted that she recused herself from item #15.

There being no objection, items #9, #10, #12, #13, #14, #15, #16, and #17 were approved on the consent calendar, with Commissioner Makel being recused from item #15.

Item #3. Proposition 34 Update; Ratification of Special Election Rules.

Technical Assistance Division Chief Carla Wardlow explained that Assembly District 65 was in the process of having a special election, and that this would be the first election being conducted under Proposition 34. She noted that staff was working with candidates and the registrar of voters in San Bernardino and Riverside counties, as well as the Secretary of State's (SOS) office, to provide guidance to candidates and election officials with regard to operating under Proposition 34 in this special election. She asked that the Commission ratify the draft guidelines.

Ms. Wardlow reported that staff had participated in a telephone conference call meeting with all but one of the candidates involved in the special election, the registrars, and representatives from the SOS. The candidates asked a few questions, she noted, and they discussed the guidelines.

Ms. Wardlow reported that these guidelines will be used in the upcoming Senate District 24 election, but that they may need some modifications, as a result of Commission actions on other agenda items.

There being no objection, the guidelines provided to the candidates for the special election were ratified.

Government Relations Director Mark Krausse reported that SB34 has been introduced by Senator Burton, and will include technical cleanup, as well as proposals specifying that termed-out legislators can still fundraise for officeholder expenses. It would also require online disclosure of contributions of \$5,000 or more within a 48-hour period at any point in an election, and would require that a political party's communications to its members would be included in the definition of "contribution".

Chairman Getman reported that staff continued to evaluate questions and priorities on an ongoing basis. She encouraged the public to continue checking the FPPC website and meeting agendas to get advance notice on questions being addressed.

Chairman Getman also reported that the date of the next Commission meeting should be posted on the website by Friday, January 19, 2001.

Item #4. Prenotice Discussion of Repeal or Amendment of Propositions 208 and 73 Regulations in Light of the Passage of Proposition 34. Repeal of Regulations 18519.4, 18530.1, 18530.7, 18531.1, 18531.3, 18531.4, 18531.5, 18532, 18535, 18539, 18541, 18550 and 18626 and Amendment of Regulations 18523, 18523.1, 18531, 18533 and 18537.

Assistant General Counsel Luisa Menchaca presented a staff memorandum asking that the Commission study regulations and repeal or amend them because the statutory authority for the provisions no longer exists as a result of the passage of Proposition 34. The memo also asks that the Commission retain with no change some regulations that should remain intact, and requests repeal of certain regulations with a note that the staff believes the language to be useful in the development of other regulations in connection with Proposition 34. She noted that this item is not an emergency regulation and would have prenotice discussion and would be brought back to the Commission for adoption in March, allowing for public input.

Commissioner Deaver commended staff for their good work in a short time frame.

There being no objection, the Prenotice changes to the regulations were approved.

Item #5. Adoption of Emergency Regulation 18573 Pertaining to the Applicability of Proposition 34 to Local Jurisdictions.

Commission Counsel Scott Tocher presented this proposed emergency regulation describing which of the Proposition 34 provisions were applicable to local jurisdictions, committees and persons. He explained that questions had already arisen regarding these issues, and that one had generated an Opinion request.

Mr. Tocher explained that staff developed a chart describing each provision of the Proposition thought to apply to local elections, and the basis for that conclusion. The proposed emergency regulation would expire in 120 days, if not adopted permanently by the Commission. It identifies specific statutes that have been rewritten by Proposition 34 and that staff believes are applicable to local jurisdictions.

Commissioner Makel noted that proposed § 18573(a) included the statement "except as otherwise provided in these statutes" and that the statement could be frustrating for people. She suggested that staff list the particular statute, or find a better way to specify which statutes apply.

Mr. Tocher responded that the specific statutes could be included.

Commissioner Swanson agreed that it would be helpful.

General Counsel Sue Ellen Wooldridge suggested that it would be important to bring a final version back to the Commission before adoption, and that the emergency regulations should be sent to OAL by the end of the day. She asked that Mr. Tocher bring it back later in the day.

There was no objection to Ms. Wooldridge's suggestion.

Item #6. Adoption of Emergency Regulation 18503 and Repeal of Regulations 18502 and 18502.1 Pertaining to Small Contributor Committees.

Commission Counsel Julia Bilaver reported that members of the public had expressed an interest in addressing "small contributor committee" issues, and that the regulation being presented was in response to many of the questions posed by members of the public.

Ms. Bilaver explained the definition of "small contributor committee" and noted that Proposition 34 allows "small contributor committees" to contribute at a higher level. She noted that the definition raised many issues and that the regulation attempts to resolve some of those issues.

Decision 1: Ms. Bilaver explained that this decision would determine whether any pre-effective date activities can count to qualify a group as a "small contributor committee". She pointed out that several committees formed under Proposition 208, which is stricter than Proposition 34, would qualify as a "small contributor committee" under Proposition 34 on January 1, 2001 if the pre-effective date activities can be counted.

There was no objection from the Commission to allowing pre-effective date activities toward qualifying as a "small contributor committee".

Chairman Getman noted that she did not agree that the word "including" be included in Regulation 18503(a)(3) (line 11).

There was no objection from the Commission to approving the proposed Decision 1 emergency regulation lines 6, 9, 17, 21 and 22.

Decision 2, Ms. Bilaver explained, asked the Commission whether to set a time frame for two of the criteria. She noted that the statute defines a "small contributor committee" as one that makes contributions to five or more candidates and that receives contributions from 100 or more persons. The present tense language of the statute, she stated, suggested that the contributions should be received on an ongoing basis. Staff suggested a 36-month time frame because records must be kept for four years, and a 36-month time frame would allow the Commission time to discover a possible violation and investigate it.

Commissioner Swanson noted that current cases are older than 36 months now, and asked whether they could be enforced beyond the 36-month timeline.

Enforcement Chief Cy Rickards responded that, unless there is an argument that a conscious effort in a fraudulent manner was made to conceal something, once the 36-month time frame has passed, it was too late to enforce. He explained that Enforcement staff tries to make an effort to resolve the cases before the time limit expired. He stated that the 36-month time frame was reasonable.

Chairman Getman noted that there is a difference between subpoenaing the records within that time period and actually bringing the action.

Without a time frame, Ms. Bilaver explained, if a committee qualifies as a "small contributor committee" during its first year, there would be no way to verify it if more than four years had gone by because the records would no longer be available.

Ms. Bilaver explained that there were two issues involved. The first issue was whether to interpret the statute to require that the contributions be made on an ongoing basis. The second issue was what time frame should the Commission use if they decide to require that the contributions be made on an ongoing basis.

Chairman Getman voiced her concern that lines 12 and 13 require that five contributions be made before qualifying as a "small contributor committee," but that the statute allowed qualification as a "small contributor committee" by virtue of those five contributions. She suggested a change in the language.

There was no objection from the Commission to changing the language on lines 12 and 13 to read "The committee makes contributions to five or more candidates within a 36 month period and each contribution equals or exceeds..."

Chairman Getman noted lines 7 and 8 did not involve the same issue, even though the wording was similar, because the decision was whether contributions were required from 100 people to qualify.

Ms. Bilaver pointed out that the second requirement seemed far more than important than the fourth requirement.

There being no objection from the Commission, the language on lines 7 and 8 was approved as written.

Decision 3 concerned Regulation 18503(a)(4), Ms. Bilaver explained, and whether the provision applied to both state and local candidates.

There being no objection from the Commission the language on lines 13 and 14 was approved as written.

Decision 4 concerned the "five or more" candidate requirement, Ms. Bilaver explained. She noted that the statute did not set a threshold of how much had to be contributed to five or more candidates in order to qualify. She asked whether the Commission wanted to impose a dollar threshold and suggested two options to consider. The first option would set a \$25 threshold, which would be tied to the record-keeping requirements of the Act. The second option would set a \$100 threshold, which would be tied to the reporting requirements of the Act.

Chairman Getman noted that this would be an awkward requirement. She explained that a committee could donate \$1 to 4 candidates and qualify to give double the contribution limit to another candidate.

Mr. Rickards stated that Enforcement staff preferred language that included a dollar amount because it would be clearer and simpler.

Commissioner Swanson suggested a \$25 threshold.

Commissioner Makel supported that threshold.

There being no objection, the Commission adopted a \$25 threshold for lines 14 and 15 because it was tied to the record-keeping requirement.

Decision 5 asked whether the Commission wanted to require that committees register as a "small contributor committee" before contributing at the higher level allowed for those committees. Ms. Bilaver noted that this was required under both Propositions 73 and 208, and involved marking on their "Statement of Organization" that they were a "small contributor committee."

David Hulse, from the Secretary of State's office, asked for clarification of those committees who were identified as "small contributor committees" under Proposition 208. He explained that there are approximately 74 filers on the record under Proposition 208 and asked whether they needed to amend their Form 410 again to qualify under Proposition 34. He noted that the SOS would be doing a computer display to let the public know which committees are "small contributor committees."

Ms. Menchaca pointed out that this would be a Proposition 34 regulation and that the Forms would need to be amended.

Chairman Getman agreed.

In response to a question, Ms. Bilaver noted that if committees did not register, neither candidates nor the public would know whether the committee could make the higher threshold contributions.

There being no objection from the Commission, the proposed language on lines 21 and 22 was adopted.

Decision 1, lines 10 and 11, Ms. Bilaver explained, involved whether contributions over the \$200 limit can be carried over.

Chairman Getman questioned whether the language meant that if a committee ever received a contribution over \$200, they would not qualify as a "small contributor committee".

Ms. Bilaver agreed, noting that if more than \$200 was received, a new "small contributor committee" would need to be formed.

Commissioner Makel agreed.

Commissioner Scott noted that it was complicated and asked if there was a way to make it easier.

Ms. Bilaver responded that committees could make sure that any funds on hand be cleansed to ensure that no one person is contributing over \$200.

Commissioner Scott noted that the issue is disclosure, and that the goal is not to require more record-keeping.

Chairman Getman stated that, if a person contributed \$300 five years ago, and the \$300 is now gone, the disqualification would no longer make sense.

Ms. Bilaver suggested that the Commission could make a distinction between those who still have money and those who do not.

Ms. Menchaca explained that, under Proposition 208, the Commission advised in the *Whipkey* advice letter that an organization that had a PAC and receives contributions of over \$50, but also wanted to create a new small contributor committee, must open a new bank account and set up a new committee.

Lance Olson voiced his concern that a committee would be precluded from retroactively qualifying as a "small contributor committee" if it ever received a contribution in excess of \$200. He suggested that if committees will be allowed to retroactively qualify in terms of time and number of contributors, then they should be allowed to demonstrate that any funds being carried over are not in excess of \$200. He also noted that some of the committees were created as far back as 1974, and that proving that they had never received a contribution in excess of \$200 would be impossible for them. He suggested dropping the "decision making" language and indicate that a committee does not receive contributions over \$200, and not include carryover money as part of the test for qualifying. Another alternative, he noted, would be to allow the committee to demonstrate that they are not carrying over any funds that were received in excess of \$200.

Chairman Getman noted her concern that there was a very clear carryover provision in Proposition 34 for candidates, making it difficult to ignore the issue. She added that there should be some way to allow the committee to qualify without forming a new committee if they do not have any money. She suggested that the language be rephrased to provide that the committee's funds do not include a contribution of more than \$200 from any single individual.

Ms. Menchaca responded that the rephrasing would give some flexibility in the method committees could utilize to qualify.

Ms. Bilaver suggested the wording for lines 10 and 11 be changed to, "For those committees who have money as of January 1, 2001, those funds do not include any amounts that were over \$200.

Chairman Getman suggested that "January 1, 2001" be deleted.

Mr. Olsen asked whether that would permit staff to issue an advice letter permitting a committee with both types of money to create a small contributor committee with some of the money, and leave the rest of the money in a PAC that did not qualify as a "small contributor committee."

Ms. Menchaca responded that it would allow that advice. She noted that staff had also advised, under Proposition 208, that (in order to ensure that it was done properly), committees would have to return all the contributions and have persons recontribute at the \$50 level. She added that Ms. Bilaver's amended wording would give staff the authority to consider various options, but it would have to be consistent with the overall scheme.

Chairman Getman suggested that the language read, "The committee campaign funds do not include contributions of more than \$200 made in a calendar year by any person."

Ms. Bilaver clarified that everything in the proposed regulation 18503(a)(3) be deleted and replaced with the language proposed by Chairman Getman.

Chairman Getman concurred.

Chairman Getman noted that, as an emergency regulation, it could be modified before being permanently adopted.

Ms. Bilaver pointed out that it will be noticed and presented to the Commission for permanent adoption in March 2001.

Chairman Getman asked that everyone study the language and present any suggestions that might make the language clearer.

Ms. Menchaca asked that any issues regarding the interpretation of this subsection be addressed by writing a request for advice.

Commissioner Makel motioned that Regulation 18503 be adopted as amended. Commissioner Deaver seconded the motion. There being no objection, the regulation was approved.

Ms. Bilaver explained that Regulation 18502 defined broad based political committees, for purposes of Proposition 73, which applied in special elections until Proposition 34 repealed those provisions. She asked that the regulation be repealed.

There being no objection, Regulations 18502 and 18502.1 were repealed.

Item #7. Adoption of Technical Clean-Up Packet Resulting from Phase 2. Adoption of Proposed Amendments to Regulations 18700, 18703.1, 18703.2, 18703.3, 18703.4, 18704.1, 18705.3, 18729 and 18730.

Legal Analyst Kelly Winsor presented a staff memo proposing non-substantive conforming amendments to regulations as a result of the adoption of the Conflict of Interest Improvement Project regulations at the Commission's December 8, 2000 meeting and legislative changes resulting from Assembly Bill 974.

Commissioner Makel motioned that the proposed amendments be approved. Chairman Getman seconded the motion. There being no objection, the motion carried.

Item #8. Approval of Campaign Disclosure Forms.

Technical Assistance Division Chief Carla Wardlow presented campaign disclosure forms to the Commission for approval. She noted that the "Statement of Organization" form was amended to include some information about small contributor committee identification. She noted that the Commission may want to include some instructions on the form for committees that did qualify or are counting previous year activity, and that those instructions should state that the date qualified is January 1, 2001.

Ms. Wardlow also suggested that a fact sheet be included with the Form 410, to explain how the new regulation works and to inform the committees of what they need to do.

There being no objection, the Form 410 was approved with the changes suggested by Ms. Wardlow.

Ms. Wardlow explained that Form 501 had been amended to include a place for state candidates to designate whether they choose to accept or decline the voluntary expenditure limits. In amending the form, she noted, staff had inadvertently deleted a place for candidates for partisan office to indicate their political party. She explained that the Secretary of State's office uses that information and requested that the information be added back on the form.

There being no objection, the Form 501 was approved as amended.

Caren Daniels-Meade, Chief of the Political Reform Division of the Secretary of State's office, stated that any of the changes that are made affect the SOS electronic filing format, the vendor community, and the filers. She asked that any future changes be bundled together so that the vendors only have to make the changes one time.

Diane Fishburn, from Olson Hagel Waters and Fishburn, explained that her firm is one of the original electronic filing partners with the Secretary of State, and that they have their own in-house custom program that they use to prepare reports and that it has been certified for electronic filing. She stated that there would have to be changes to the Form 460 to implement Proposition

34, as well as some other legislation. She asked that the changes be done at one time, programming for the form takes a substantial commitment of time and resources.

Chairman Getman clarified that the proposed Form 460 is the main form used by candidates and committees, and that the major change being proposed is to Schedule B Part I, and Schedule H. Those changes, she noted, were a result of a bill (SB 2076) that became effective January 1, 2001.

Ms. Fishburn noted that the current Form 460 has an Annual Report of Outstanding Loans, where the status of each loan is reported. She suggested that, to the extent that reports have to be filed, the annual report could be filed with the Form 460, and the status of the loan would be provided in accordance with the Polanco bill, but the forms would not have to be changed.

Ms. Wardlow pointed out that, while she was sympathetic with the difficulties associated with the filing format, there are over 60 local elections occurring in California this year, and that she was hesitant not to have the most up-to-date forms available for those elections.

Commissioner Scott asked whether there was a way to have a single universal electronic reporting form that is developed with the Secretary of State's office, with the FPPC licensing the software for the program. Local officials, she noted, could make changes to it. She added that Los Angeles currently had a form that the Secretary of State's office might consider using.

Ms. Wardlow agreed that it would be the ultimate goal but noted that the FPPC does not have a programmer on staff. Ms. Wardlow did not know how to implement the sudden changes to the law and get the information out to the people who have imminent filing requirements.

Commissioner Scott asked whether anyone knew of a rumored meeting between the Secretary of State and Los Angeles, during which the Secretary of State indicated support for the electronic form Los Angeles had developed.

Caren Daniels-Meade reported that she was unaware of any meetings between Secretary of State Bill Jones and the Los Angeles Ethics Commission.

Commissioner Scott suggested that the Commission pursue a fact-finding mission to determine whether an electronic form exists that could be used for everybody.

Chairman Getman noted that Los Angeles, San Francisco, Sacramento and Oakland have electronic systems, and that representatives from those groups met at the COGEL conference in December, 2000 to discuss electronic formats. She agreed that Commissioner Scott's suggestion was a good one, but did not think that it could be done quickly enough to be effective this year.

Commissioner Scott responded that she had heard that it could be done, and suggested that other staff take over some of Ms. Wardlow's duties to give her the time to explore the suggestion.

Chairman Getman noted that the Los Angeles format was not compatible with the state, San Francisco, or Oakland, and that everyone would need to agree on a format first, and that the format was currently under discussion.

Ms. Wardlow noted that a majority of candidates and committees in California still file on paper.

Ms. Daniels-Meade noted that the Secretary of State's office mailed a questionnaire regarding electronic filing to every city and county in California about three months ago.

Chairman Getman reported that staff met with local ethics agencies in the state of California last fall, and that an electronic filing summit was discussed. She agreed that further discussions should be held this year.

Commissioner Scott agreed, and noted that potential funding may be available, and that it should be done soon, since there is a lot of interest right now in elections. She suggested that California could be the model for the nation.

Ms. Fishburn requested that the FPPC and the SOS develop some type of protocol for making changes to the forms, so that consideration can be given to the effect of the proposed changes on existing formats and the timing of implementing those changes could be addressed.

Ms. Fishburn clarified her recommendation that the Form 460 and the Form 465 changes related to Proposition 34 be made all at once. She suggested that the existing Form 460, Part 3 schedules to B and H could be required to be filed with any reports as an interim procedure.

Ms. Wardlow expressed her concern that informing candidates of the requirement might be difficult to accomplish.

Commissioner Scott suggested that the fact sheet that will be sent to candidates and committees include the change suggested by Ms. Fishburn.

Ms. Wardlow agreed that it could be a possibility, but noted another concern that there would be people who do not get that information. She explained that the thresholds indicated on the forms were now incorrect, and that it would be confusing.

Chairman Getman noted that the Form 465 would only require a change to the instructions, and noted that everyone should be in agreement that the instruction change should be implemented and sent out. She asked whether the Form 460 instructions could be changed, as an interim measure, without changing the form.

Ms. Wardlow responded that it could be done, but noted that if significant changes were made to the form, it would have to be sent out for public comment, and that the timing of the process would mean that staff could not get the new instructions to the Commission until April. She did not object to the idea, but pointed out that it would be a hardship for local filing officers to get an interim form, then get a new form 3 months later.

Chairman Getman pointed out that a new form would have to be developed before the end of the year anyway. Ultimately, she noted, the concept of forms will be left behind, and online filing will deal with information and local jurisdictions can display it in whatever manner they prefer.

Commissioner Scott noted that online filing would provide a better way to gather statistics.

Ms. Menchaca clarified that the issue involved an interpretation of an amendment to § 84211(g), and noted that the subsection was very specific as to what is required. She pointed out that it specified that the form include the original date and amount of each loan for that reporting

period. She noted that staff would need to study whether the suggestion being made would constitute a waiver of the statute.

Chairman Getman proposed that staff return the issue to the Commission next month after further study.

Commissioner Swanson asked that the date on the bottom of the form have the month spelled out.

Ms. Wardlow asked that the box on the cover page for the Form 460 be changed to indicate "small contributor committees" instead of "broad based committees."

Commissioner Makel motioned that the forms, with the exception of the Form 460, be approved. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Item #5. Adoption of Emergency Regulation 18573 Pertaining to the Applicability of Proposition 34 to Local Jurisdictions (continued).

Mr. Tocher returned to the Commission with a new proposal to eliminate from Regulation 18573(a) the words, "except as otherwise provided in these statutes" He reported that, after working with Ms. Wooldridge, they concluded that it would be less complicated and therefore less confusing.

Commissioner Makel motioned that the regulation be adopted as amended by Mr. Tocher. Commissioner Deaver seconded the motion. There being no objection, the motion carried.

Chairman Getman introduced new FPPC employees Steve Meinrath, Holly Armstrong and Jon Mathews.

Item #11. In the Matter of Kirk Cunningham, FPPC No. 99/704.

Commission Counsel Steve Russo presented this stipulation, explaining that the respondent failed to timely file his assuming office Statement of Economic Interests and his 1998 annual Statement of Economic Interests, even after being reminded several times by local officials and FPPC staff. The respondent filed both of the SEI's as well as a leaving office SEI after an enforcement action had been initiated by the FPPC.

Mr. Russo explained that the administrative penalty for this type of case is between \$400 and \$600 per count. The Enforcement Division reached a stipulated settlement of this case with the respondent with a fine of \$800. He noted that the case was settled in front of an Administrative Law Judge (ALJ), and that the ALJ determined that the fine was a fair resolution of the matter and consistent with the fine that the ALJ would have ruled if he had heard the matter himself.

Mr. Russo reported that Enforcement Division agreed to the resolution because it was appropriate given the lack of sophistication of the respondent with regard to the requirements of the PRA, and the fact that the respondent had left office by the time the matter was resolved. Mr. Russo asked the Commission to approve the stipulation.

Commissioner Swanson stated that the fine should be \$4,000 because he was a member of the City Finance Committee and should have known better. She noted that he had received warnings

that he chose to ignore, and an \$800 fine seemed like a slap on the hand. She asked how a higher fine could be imposed.

Mr. Rickards explained Enforcement Division determined that the case was not worthy of the time and staff resources required to pursue a higher fine, because it was not likely that the ALJ would have imposed a higher fine.

Mr. Rickards stated that the Commission could have proceeded to a hearing in front of the ALJ.

Commissioner Makel clarified that if the Commission did not approve the stipulation, it would go to a hearing in front of the ALJ. If the ALJ ruled in favor of the FPPC, the ALJ would fine the respondent \$800.

Mr. Russo explained that the Commission could then reject the ruling of the ALJ, review a transcript of the hearing and make a determination as to what the penalty ought to be, or they could have a hearing *de novo*, bringing the witnesses in and hearing the case themselves.

Mr. Rickards clarified that the Commission could (1) review the ALJ's decision and reduce the fine without a hearing, or (2) have a hearing on the record with the transcripts, or (3) have a full hearing with the witnesses and increase the fine.

Commissioner Makel noted that the respondent would then have appellate rights after the Commission's final ruling was made.

Chairman Getman motioned that the stipulation be approved.

Commissioner Deaver noted that agenda item #8 was even more blatant.

Chairman Getman stated that she did not disagree with Commissioner Swanson, but that she agreed with Enforcement Division's judgement that, at some point, the case was no longer worth the effort to increase the fine.

Commissioner Makel seconded the motion, but noted that she agreed with Commissioner Swanson and Chairman Getman.

Commissioner Swanson encouraged Enforcement staff to fight for higher fines when presenting cases to the ALJ.

Commissioners Scott, Makel, Deaver and Chairman Getman voted "aye." Commissioner Swanson voted "nay." The motion carried by a vote of 4-1.

Commissioner Scott also encouraged Enforcement staff to present a stronger case to the ALJ.

Chairman Getman stated that she supported Enforcement staff work on this case, and was sure that a strong case had been presented.

Item #18: Executive Director's Report.

Executive Director Wayne Strumpfer presented the "FPPC Statement of Governance Principles" for the Commission's consideration.

Commissioner Swanson requested that on page 2, item C the word "Commission" be replaced with the word "Agency," so that the first sentence would read, **"The Commission ensures the proper conduct and governance of the Agency."**

Mr. Strumpfer agreed with the change.

Commissioner Swanson requested that on page 2, item C(3) the word "and" be replaced with the word "and/or" so that the phrase read, "Between meetings communicate to staff through the Executive Director and/or Chairman...". She noted that it is not always logistically possible to communicate with both the Chairman and the Executive Director.

Chairman Getman agreed, noting that it was not intended to require that both be contacted, and that it was a typographical error.

Commissioner Deaver suggested that, instead of replacing it with "and/or", it be replaced with "or".

Mr. Strumpfer agreed.

Commissioner Swanson requested that, in the same sentence, the word "any" be replaced with the word "each."

Mr. Strumpfer agreed.

Commissioner Makel stated that she had violated item C.3 many times by contacting staff directly.

Commissioner Scott added that she thought the Commissioners should be able to contact staff directly.

Mr. Strumpfer responded that he was not trying to censor the Commissioners from talking to staff. His suggestion was that the Executive Director serve as a "point person" so that, if there are other issues involved, such as workload issues, the Commissioner could be directed to another staff member who could respond to the concern without disrupting the flow of work. Additionally, he believed that the Executive Director should be the person to work, through the staff, with the Commission. He stated that his role would be more of a liaison, and that he would not tell a Commissioner that they could not speak with any staff member, but that he would determine what the Commissioner needed, and find the best staff member to answer the question.

Commissioner Scott stated that she agreed with Mr. Strumpfer, given his personality, but that it had to work both ways. She explained that staff needed to tell Mr. Strumpfer that they had been contacted, and that there needed to be checks and balances. She noted that there could be a situation where an Executive Director may not want the Commission to be informed, and that she would not want to rule that the Commission could not approach people. She agreed that it was a good idea as a matter of protocol, but did not want to see a situation where the Commissioners are cut off more than they are.

Commissioner Scott noted that the Commissioners are part-time, and that current staff does a good job keeping them informed, but, under other Chairmen in the past, the Commissioners have

not been able to get information. She added that staff has great ideas, and that the Commissioners need to hear those ideas.

Commissioner Makel stated that permanent guidelines are a good idea, and that if the Commission has an Executive Director who will not allow the Commission to communicate with staff, it would be time to get a new Executive Director.

Commissioner Scott responded that, traditionally, a Chairman picked an Executive Director who is their right-hand person.

Commissioner Makel responded that the Commission is involved in the hiring of the Executive Director.

Mr. Strumpfer agreed, noting that the Commission would still determine who the Executive Director will be and that the Commission still has the right to fire or take disciplinary action against the Executive Director when necessary.

Commissioner Scott asked about getting items on the agenda and getting responses, noting this is a good idea, but it would require a stronger Commission.

Mr. Strumpfer responded that Commissioner Scott's concerns involve two different issues. He disagreed that it would cut the Commission off from staff, and added that it would allow the Executive Director to serve as a liaison between the Commissioners and staff.

Commissioner Scott noted that there have been times when the Commissioners have not been given information, and the answer to the problem was not disciplinary action against the Executive Director. She asked that staff explore a way to solve Mr. Strumpfer's concerns and still ensure that the Commissioners have a way of obtaining information.

Commissioner Deaver responded that the Commissioners could "pick up the phone".

Commissioner Swanson noted that staff was there to provide technical support, and the Commission was there to make policy. She added that she believed the proposed provision would support those roles. She noted that there has to be a chain-of-command, and that questions or clarification should go through the Executive Director or the Chairman. If the Executive Director or the Chairman do not respond to the Commissioner's concerns, she added, it could be brought up at the meeting.

Mr. Strumpfer agreed, noting that the Commission would need to make clear to the next Executive Director, the liaison relationship of the Executive Director to the staff and Commissioners. He believed that the Commission had to entrust the Executive Director to deal with these issues.

Commissioner Scott stated that she did not disagree with a chain-of-command, but she did not believe that the Commissioners could be told that they cannot talk to staff.

Commissioner Makel clarified that the Commissioners will never be stopped from contacting staff, but that there will be coordination before that contact is made.

Mr. Strumpfer agreed, and reiterated that the rule would be just for liaison and organizational purposes. He noted that it would be helpful for the Commission as a whole, because if he is aware of a staff member who has more expertise in a matter, he could steer the Commissioner to the more knowledgeable staff member.

Commissioner Scott requested that the wording on page 1, Part I. A. be changed to add the word "proposes" to the first sentence, noting that it could satisfy some of her concerns. She added that there needs to be some way of fostering better communication with staff. She did not disagree with anything that had been said, but believed that if a Commissioner contacted staff, staff should then let the Executive Director know about the contact.

Commissioner Swanson requested that page 3, part II.I. be changed to add the words "with Commission approval", so that the sentence read, "Proposes and, with Commission approval, implements short term and long term goals and priorities for the Commission and staff."

Commissioners Scott and Makel agreed.

Mr. Strumpfer noted that the document was written, not for himself or Chairman Getman, but for future Executive Directors and Chairman, so that it is a lasting document within the agency.

Commissioner Swanson requested that the document be dated.

Commissioner Swanson requested that page 4, item B.1. be changed to add "administration and achievements" at the end of the sentence.

Commissioner Scott suggested that the word "goals" also be added to that item.

Mr. Strumpfer agreed that it was a very good idea. He suggested that he work on the wording and bring it back later in the day for Commission approval.

Commissioner Scott requested that there be a sentence stating that the Chairman prepare and approve all administrative policies for Commission approval. She noted that this would be required under state administrative law.

Mr. Strumpfer noted his concern that the Executive Director is hired to handle or make those decisions, and he requested that the Executive Director be given a certain amount of autonomy to do the right thing with day-to-day issues.

Commissioner Scott responded that she was not referring to day-to-day issues, but rather an Employment Manual, an Affirmative Action Policy, having appropriate public records actions, and that, as an administrative agency the Commission cannot delegate certain authority. She stated that those are formal acts which require formal action and that the Commission was out of compliance. She offered to go to the Attorney General's office to get an opinion on the matter. She added that the Commission needs to take formal action and that it is Mr. Strumpfer's obligation to present these once every year or every two years to the Commission. She did not believe that it took a majority of the Commission to decide, and stated that she was presenting this to the General Counsel requesting a legal opinion to determine whether, as an agency, the Commission has an obligation to take some formal action.

Mr. Strumpfer disagreed with Commissioner Scott, stating that the Commission has an obligation to follow the law and that the Commission was following the law.

Chairman Getman stated that Mr. Strumpfer should bring the document back later in the day for further discussion.

Commissioner Swanson requested that item B. 2. be moved under item B. 5.

Mr. Strumpfer agreed.

Item #2. Public Comment

Mr. Strumpfer introduced Secretary of State Bill Jones.

Mr. Jones expressed his appreciation to the FPPC for their work with the Secretary of State's office in their joint goals.

Mr. Jones stated that, even though he makes only a few appointments, one of the most important of those appointments is that of Commissioner to the FPPC. He commended Commissioner Deaver for taking the time, the energy and the diligence to contribute to the activity of oversight of the political contributions in the state of California. He presented a resolution to Commissioner Deaver, commending his dedication and work for the Commission.

Chairman Getman adjourned the meeting for a break at 11:48 a.m.

The meeting reconvened at 1:47 p.m.

Item #18: Executive Director's Report (continued).

Mr. Strumpfer reported that he made changes to page 4 item B. of his proposal so that it will read:

B. Acts as the chief budgetary and administrative officer of the FPPC.

1. In consultation with the Chairman, proposes the annual budget to the Commission.
2. Reports regularly to the Chairman and the Commission on the status of FPPC finances, administration, goals and achievements.
3. Prepares and submits budget change proposals, requests for deficit funding and other budgetary documents.
4. Retains final approval for all fiscal analyses prepared at the request of the Legislature, Legislative Analyst or Department of Finance.
5. Retains final approval for all expenditures.
6. Authorizes unbudgeted expenditures, when appropriate, up to \$25, 000.

Mr. Strumpfer presented additional changes, as requested by the Commission. He recommended that those items read (changes underlined):

Page 1:

- A. The Commission proposes, adopts, and monitors policies for the FPPC.** This includes:

1. Approving annual policy goals and objectives and evaluating efforts...

Page 2:

B. The Commission ensures the proper conduct and governance of the agency...

- B. 3.** Between meetings communicate to staff through the Executive Director or Chairman, who shall ensure that all commissioners receive the benefit of information and advice provided to each individual commissioner.

Page 3:

- II. I. Proposes and, with Commission approval, implements...

Chairman Getman noted additional punctuation changes to Page 1, item I. A.

Commissioner Swanson motioned approval of the FPPC Statement of Governance Principles as amended. Commissioner Makel seconded the motion.

Chairman Getman called for the vote.

Commissioner Scott stated that she was voting "aye" on the motion, but added that the Commission still needed to have a role in adopting and monitoring administrative policies for the agency.

Commissioners Makel, Swanson, Deaver and Chairman Getman voted "aye." The motion carried unanimously.

Items #19 and #20.

The following items were taken under submission by the Commission:

Item #19. Litigation Report.

Item #20. Legislative Update.

Commissioner Scott stated that she had requested that Enforcement Chief Cy Rickards discuss, in general, status of old cases, and noted that she had distributed an inventory of open cases to determine if there were systemic problems. She noted that it was not on the agenda, and urged the next Commission to explore the reasons for the backlog of cases and to determine what to do with those old cases.

Chuck Bell commended Commissioners Deaver, Makel and Scott for their services as members of the FPPC, noting that they served the public interest well. He stated that the PRA should be taken seriously and thanked them for taking it seriously. He wished them well.

Commissioner Scott thanked him and the members of the political community who have helped the members of the Commission.

Ben Davidian noted the importance of the job the Commissioners do, and stated his only regret that the Commissioners are not properly compensated for the tremendous amount of work and heartache that they put into the job of Commissioner. He stated that the Commissioners have been part of an important element of California society. He thanked them for their sacrifices.

Commissioner Deaver thanked Mr. Bell, stating that the work has been enjoyable.

Commissioner Scott thanked Kathleen Connell for appointing her to the position of Commissioner. She agreed that it was wonderful to have been able to help form public policy.

The meeting adjourned to closed session at 1:55 p.m.

Dated: February 9, 2001

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman